

Report

TO

GOVERNOR MARVIN MANDEL

OF THE

COMMITTEE TO SUBMIT A CODE OF ETHICS

TO

**ESTABLISH RULES AND REGULATIONS FOR ALL
EXECUTIVE DEPARTMENT OFFICERS AND
EMPLOYEES IN THE AREA OF POSSIBLE
CONFLICT BETWEEN THEIR PRIVATE
INTERESTS AND OFFICIAL DUTIES**

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March 7, 1969

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LETTER OF TRANSMITTAL

March 7, 1969

DEAR GOVERNOR MANDEL:

Transmitted herewith is the Report of the Committee to submit a Code of Ethics to establish Rules and Regulations for all executive department officers and employees in the area of possible conflict between their private interests and official duties, with the Code of Ethics submitted for your consideration.

Respectfully submitted,

REUBEN OPPENHEIMER,

Chairman.

Governor Marvin Mandel
Annapolis, Maryland

REPORT
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of the
COMMITTEE TO SUBMIT A CODE OF ETHICS
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On January 17, 1968, the General Assembly enacted a Bill reading as follows:

"The Governor shall promulgate rules and regulations establishing a Code of Ethics for all executive branch officers and employees in the area of possible conflict between their private interests and official duties or state employment. The rules and regulations, which apply to persons included in the classified service and subject to the provisions of Article 64A, shall not be contrary to the provisions of Article 64A. The rules and regulations shall be filed with the Secretary of State and shall be open to public inspection." (Article 41, Section 14A of the Maryland Code).

Pursuant to that resolution, in February, 1968, former Governor Spiro T. Agnew (now Vice-President of the United States) appointed this Committee to study and make recommendations to him in respect of the provisions of such a code. Additional members of the Committee were subsequently appointed. C. Stanley Blair, former Secretary of State, found it

necessary to discontinue his services on the Committee because of his new national duties in Washington. After your election as Governor, you appointed the present Secretary of State, Blair Lee, III, and Henry G. Bosz, the new Commissioner of Personnel, as additional members of our Committee.

While the original Committee was appointed before the beginning of your Governorship, you were instrumental in its creation and are familiar with the nature of the work. The Bill pursuant to which this Committee was appointed was passed while you were Speaker of the House. As Speaker, at the Committee's request, you as well as Senator William S. James, the President of the Senate, met with us to give us the benefit of your general views on the subject matter of our study.

Nature of Investigation

The starting point of our study was the law as to conflicts of interest of executive branch officers and employees as it presently exists in our State. Maryland has a constitutional provision and several statutes relating to the removal or suspension of State officers and employees for unethical behavior. Section 15 of Article II of the Maryland Constitution gives the Governor of the State removal power in respect of officers appointed for a term of years. Sections 54, 55 and 55A of Article 41 of the Maryland Code set forth the procedure to be followed by the Governor in the removal or suspension of civil or military officers. Sections 33 and 36 of Article 64A of the Code set forth the procedure to be followed by the Commissioner of Personnel in the removal or suspension of Merit System employees.

Article 19A of the Code is a criminal statute. It is a general prohibition, with some exceptions, of the holding of a personal financial interest by a State executive branch employee in any transaction in which his agency is concerned. The penalties for violation are fine or imprisonment. Other provisions of the Code deal with conflicts of interest of officers

and members of the boards of certain institutions, including any public or private institution supported, in whole or in part, by State money, the State Board of Social Services, the Maryland Airport Authority, and the Department of Correction (the statutes referred to are Section 42 of Article 27, Section 1(d) of Article 88A (1968 Supp.), Section 20(a) of Article 62C (1968 Supp.) and Section 687 of Article 27).

We have also studied various bills recently offered in the House or Senate dealing with conflicts of interest of State executive officers or employees which, while they failed of passage, indicate legislative thought on the matter. Local legislation, in force or proposed, as to such conflicts, has been helpful. Article VII of the Baltimore City Charter and Chapter 15 of the Laws of Rockville deal with the subject matter of our study. The Baltimore County Citizens Advisory Committee made a thoughtful report on conflicts of interest, but a bill based on that report introduced in the Baltimore County Council in 1962 was not passed.

We have had before us the Rules of the Commissioner of Personnel dealing with conflicts of interest of State employees under the Merit System as well as the grievance procedure as to all State executive branch employees provided for by gubernatorial executive orders. Some of the provisions of the Code of Ethics of the Maryland State Teachers Association pertain to the area of our study.

We have examined laws and regulations of the federal government in respect of conflicts of interest of officials and employees of the executive department. Section 208 of Title 18 of the United States Code, as amended in 1962, and the Senate Report which preceded the amendment relate, on the national level, to some of the problems which confronted us as to our State. In 1965, the President promulgated an order setting forth standards of ethical conduct for United States officers and employees. Pursuant thereto, the United States Civil Service issued regulations concerning employee ethics, and the Department of Defense and other federal agencies

have promulgated rules on the subject, all of which have been helpful to us.

On the state level, we have had the benefit of various codes of ethics adopted in other jurisdictions dealing in whole or in part with conflicts of interest of executive branch officers and employees. Two of these codes, those of Delaware and California, were promulgated by gubernatorial executive order in 1963 and 1966. Other states have statutes dealing with the matter. These states include Florida, Illinois, Louisiana, Massachusetts, New Jersey, New York, Texas and Washington. The City of New York has an Administrative Code with respect to ethics of its officials and employees.

In 1960, the Association of the Bar of New York, through its Special Committee on Federal Conflict of Interest Law, issued a report on conflict of interest in the federal service. In 1964, Professor Bayless Manning, the Reporter for that committee, published a book on the Federal Conflict of Interest Law. These comprehensive studies served as the basis for a proposed federal statute which, however, was not enacted into law. We have also considered various law review articles and other material dealing with the subject matter of our study.

Our Committee which, in addition to its homework and many informal conferences, has had thirteen meetings, includes among its members the Attorney General of Maryland, the Comptroller of the Treasury, the Secretary of State, the Chairman-Director of the State Roads Commission, the former and present Commissioner of Personnel and the Commissioner of Motor Vehicles. It also includes the General Counsel of the Maryland Classified Employees Association, the Vice-President for Administrative Affairs of the University of Maryland and the Executive Director of the Board of Trustees of State Colleges. We have had the benefit, therefore, of the experience of the heads of major executive agencies of the State and of representatives of some of the groups of State employees who are directly concerned with the subject matter of our deliberations. Our Committee early deter-

mined, however, that it would be helpful for us to have the views of elected officials of various organizations of State employees who would be governed by the Code of Ethics. Accordingly, at our request, we have met with officials of the American Federation of State, County and Municipal Employees, the Maryland Classified Employees Association, the Maryland State Teachers Association, and the Faculties of the University of Maryland and the State Colleges.

While you and Senator James did not officially represent the General Assembly in our meetings with you, we profited materially from your comments and suggestions. We have also conferred informally with representatives of various civic and other entities which serve the general public and are familiar with its point of view in the area of our study. At our request, the President of the Maryland State Bar Association, Judge J. Dudley Digges, designated members of that association to meet with us. We have had the benefit of the experience and comments of Dean William P. Cunningham, Chairman of the Board of Ethics for Baltimore City. Helpful suggestions have emanated from these various conferences.

The work of our Reporter, Anthony M. Carey, Assistant Attorney General, has been invaluable.

The Persons Affected

It is estimated that over 40,000 employees of the State, or of agencies or boards created by the State, will be affected by the proposed Code of Ethics. The report of the Executive Reorganization Committee appointed by Governor Agnew lists 246 departments, boards, commissions and other agencies which, on January 1, 1969, constituted the executive branch of the Maryland government.

By Section 15 of Article II of the Maryland Constitution, the Governor has the power to remove for incompetence or misconduct all civil officers who receive their appointment

from the executive for a term of years. By far the largest number of State employees, however, are appointed by State agencies or boards. The Code of Ethics which you promulgate, therefore, should be separately adopted by the various agencies and boards who have direct authority over their employees. Some of these agencies, such as the Commissioner of Personnel, have their own codes of ethics issued by them under a rule-making authority delegated by the General Assembly. Uniformity in this field is most desirable and we are confident that, at your suggestion, the Code of Ethics which you promulgate will be adopted by the various State agencies and independent boards to which the State employees are responsible.

Some State employees, such as lawyers and teachers, have ethical problems in the area of conflict of interest which pertain peculiarly to their special fields and are not of general application. The promulgation of the contemplated Code will not interfere with the provisions of such canons and codes as go beyond the general area here considered.

The proposed Code does not deal with members of the General Assembly or its employees, or with employees of local political subdivisions. Nor does it deal with constitutionally elected officers. By the terms of the Bill of the General Assembly and of the appointment of this Committee pursuant thereto, the scope of our study is expressly limited to the formulation of a proposed Code for officers and employees of the executive branch of our State government.

Policies Involved

The principal objective of the Code of Ethics which we are recommending is to maintain an impartial administration of the State government. As in courts, the manifestation of impartiality is as important as impartiality itself. It is vital to the maintenance of public confidence in our State government that Maryland's executive officers and employees act only for the State, uninfluenced by any consideration of self-

interest except that inherent in the proper performance of their duties. It is also essential that the public, as well as the State employees, know what are the minimum standards of conduct in the area of possible conflicts of interest.

The standards of ethical conduct should be as definite as reasonably possible, but no written document of this nature can in terms cover all the specific questions which will arise. The great majority of the persons affected, we believe, are anxious to avoid any conflict of interests in the performance of their duties, but may often be in genuine doubt as to what they should or should not do in a particular situation. The head of a State executive agency may have similar questions as to whether an employee's course of conduct violates the Code. It is important that a simple procedure be provided so that such questions may be promptly resolved by an independent agency. The Board of Ethics whose creation we recommend would be authorized to answer such questions in advisory opinions. These opinions, which would be published, would also act as guides for the future. Other jurisdictions in which Codes of Ethics are in effect generally provide for Boards of Ethics which are empowered to render such opinions. The Joint Committee on Ethics of the Maryland General Assembly performs a similar function.

The standards set forth in any code attempting to regulate conduct are apt to remain only general guides for the individual conscience unless there is a fair and practical procedure for their enforcement. While we believe that criminal penalties should be available for gross breaches of ethical standards, alleged improper conduct of State executive employees is generally dealt with in an administrative proceeding, which may result in suspension or dismissal. A person charged by the head of his department with a material violation should be assured that a finding of the facts will be made, on his request, by an independent tribunal which has not initiated the charges. The principle that the functions of prosecution and judgment should not be combined in a single individual is as basic to sound administrative procedure as

it is in criminal law. No matter how fair the administrative procedure may be in actuality, we think that a person charged with a serious violation of the Code should have the right to a factual investigation by the Board of Ethics.

We believe that provision should also be made for independent factual examinations by the Board, at the request of elected representatives of the public, of situations in which a conflict of interest is suspected, with some show of reason, but in which no action has been taken by the agency or person involved.

The standards set forth in a Code of Ethics should be practical. Important phases of the State's policies are determined or administered by unpaid members of commissions and boards. In the words of a recent concurring opinion in a Supreme Court decision dealing with arbitrators: "It is often because they are men of affairs, not apart from but of the marketplace, that they are effective * * *" The Maryland Court of Appeals has referred to the "legislative apprehension that, in view of the multitude of matters in which the State has an interest, an over-technical, unrealistic application of the sound conflict of interests principle might make it difficult for the State to find citizens of the caliber and broad interests whom it wishes to act on its behalf."

The problems of recruitment are not confined to unpaid board members. Many able men and women are glad to serve the State, as a career or for a period of years, for relatively modest salaries, but unreasonable restrictions act as a deterrent. For example, isolation from amenities of social life is not a necessary badge of integrity, if the amenities are not a cloak for endeavors to influence official action.

On the other hand, the prohibitions of a Code of Ethics cannot be confined to blatant and deliberate attempts to use the public service for private gain. For the guidance of the State executive employees and the maintaining of public confidence, the Code must forbid activities or situations which could reasonably be expected to encourage or permit the conflicts of interest which it is the purpose of the Code to prevent.

The Standards

As the variances in the codes of ethics governing conflicts of interest in other jurisdictions evidence, the balancing of the various considerations involved is difficult.

In the preparation of the suggested Code, we have kept in mind the limitations upon its scope inherent in the Resolution of the General Assembly and in the appointment of this Committee. We do not believe that a Code of Ethics for executive branch officers and employees, confined to the area of possible conflict between their private interests and official duties, should encroach upon the general power of administration delegated to the various State agencies in other areas.

One of the questions considered was the possible conflict of interest when a full-time State employee takes another job in addition to his State employment. Section 3 of Article III of the proposed Code states that it shall be considered unethical for a regular employee to engage in outside employment which results in a conflict between his private interests and his official State duties and responsibilities or which impairs or could reasonably be expected to impair his independence of judgment in the exercise of his official duties. However, the question of whether the outside employment of itself impairs the efficiency of the State employee because of the extra hours of work involved is a matter for administrative determination. The Code does not deal with that aspect of "moonlighting".

Some codes in other jurisdictions deal with the personal use of state-owned property. We do not believe that such questions as whether or not a State employee who has been given the use of a State-owned motor vehicle in the performance of his duties is improperly using the car for personal or family purposes should be dealt with in the Code. The Board of Ethics should not be asked to give an advisory opinion or to make a determination of fact on such trivial questions as whether the employee violated the Code by taking his family to a nearby theatre in a State-owned vehicle. Such

matters are essentially within the discretion and judgment of the employee's administrative superiors.

Some of the standards of ethical conduct in the proposed Code are set forth in general terms. For example, our Committee spent a substantial amount of time in connection with the drafting of Section 1 of Article III which prohibits the receiving of gifts by State employees. Some of the codes established by federal regulatory agencies contain a number of exceptions to the prohibition in an endeavor specifically to exempt minor matters which should not reasonably be considered as unethical conduct. Our own determination is that an attempt to spell out such exemptions may well create more problems than it solves and that the application of the section in cases of doubt can best be resolved by requests to the Board of Ethics for advisory opinions.

In other sections of the Code we have deemed it appropriate to deal specifically with certain situations which have arisen in the past and which have left unresolved questions of possible conflicts of interest. Section 6(c) of Article III is an example. That section specifically covers a situation in which a State officer or employee has a financial interest in a corporation which does business with an entity regulated by the agency although not directly with the agency itself. Again, subsection 8(c) of Article III deals specifically with transactions involving State acquisition of real estate. It is sometimes important to the State to acquire land which may be held by a State employee. We have endeavored to spell out the manner in which the State may proceed in such cases with due regard to the proper interests of the State, the employee and the public.

Problems of Enforcement

The thorniest problem in the field of our study is the situation presented when a State executive officer, board member or employee has a financial interest which conflicts or may conflict with the disinterested fulfillment of his State duties. The difficulties include the definition of such a con-

flicting interest and, where it exists, how to prevent its inherent danger to good government in a manner both effective and realistic.

The basic problem, as pointed out in the 1962 Senate Report on Bribery, Graft and Conflicts of Interest is how, on the one hand, to prevent private interests and activities of public officials which are wholly incompatible with the duties of public office, and, on the other hand, to eliminate unnecessary obstacles to recruiting qualified people for government service.

Attempts to solve the problem vary with the nature of the governmental function involved. The United States Senate requires that the President's nominees for his Cabinet, before confirmation, disclose their personal holdings and, in some way, divest themselves of those which may involve a conflict. Possible conflicts of interest among members of the federal and state legislatures are regarded in a different context. The Joint Committee on Ethics of the Maryland General Assembly, established pursuant to the Report of the Assembly's Committee on Legislative Ethics, relies upon disclosure as the sole prophylaxis. The Report emphasized that the Assembly is composed of elected officials who serve on a part-time basis. As to the executive branch personnel, to whom our study is limited, we do not believe that disclosure of personal holdings in a conflict situation is sufficient of itself for the public protection.

The first approach of other states which have codes of ethics for their executive officials and employees was the simple one of making the retention of private financial holdings which might result in conflicts of interest a criminal offense. Of recent years, however, another method of dealing with the problem, less stringent but more realistic, has been invoked. Under this approach, executive officers and employees are required to disclose personal holdings which, under varying definitions, are deemed to create a real or likely conflict of interest. They must then disqualify themselves from acting for the state in the matter involved. Provision is

generally made for exemption from the disqualification by superior officers or an independent state agency, when the possible conflict is deemed immaterial or when, under all the circumstances, it is found advisable in the public interest that the disqualification be waived. The granting of the waiver and the reasons for it are made a matter of record.

Under this plan, a person contemplating state service on a full or temporary basis is no longer deterred by the threat of criminal prosecution for continuing to hold investments acquired in the normal course of private life. Divestiture of such holdings does not become necessary or advisable as a condition to entering government service. In the words of the 1960 report of the Special Committee of the Association of the Bar of New York:

"Many citizens will accept lower pay on a government assignment, but few will, in the name of conflict of interest, throw away their future security plans to accept government appointment. To require such a sacrifice compounds the recruiting difficulties of the government arising from low salaries, the generally low prestige of government service, the availability of favorable opportunities in the private economy, and the trend toward less mobile careers. Permanent government employees, on the other hand, can hardly be attracted or kept in government service if they are treated as second-class citizens forbidden to share, in their private lives, in the growth of the nation's economy."

Except in extreme cases, the objective in this area of conflicts of interest is not punishment but prevention. The criminal sanction is cumbersome and often ineffective. The disclosure-disqualification approach, on the contrary, if the kinds of personal investments affected are clearly and practically defined and if the disqualification procedure is simple and quick, prevents conflicts without unreasonable interference with the officer's or employee's right to his personal freedom of action. A substantial bar to state recruitment is removed and, while disqualification does not guarantee the

protection of the public, it seems a more practical and effective tool than criminal prosecution.

The disclosure-disqualification approach was adopted by Massachusetts and Delaware in 1963 and by Louisiana in 1964. Section 208 of Title 18 of the United States Code, as amended in 1962, makes participation in federal governmental action by an officer or employee of the executive branch or an independent agency a crime if he or members of his family have a conflicting financial interest in the matter. However, an exception is provided if the officer or employee discloses his interest to a superior and there is a ruling that the individual interest is not so substantial as to be likely to affect the integrity of his service. Unlike the provisions of the Maryland statutes, in the federal law participation in the governmental action is made an express requisite of the criminal offense. Because of this provision and the further provisions as to disclosure and waiver, the federal act may well be deemed to embody the disclosure-disqualification approach. This construction is fortified by the legislative history. Several of the most important independent federal agencies, including the Department of Defense, the Securities and Exchange Commission and the Atomic Energy Commission, have expressly adopted disclosure-disqualification procedures by regulations.

Were we writing on a blank page, we should unhesitatingly recommend this approach as part of the enforcement of the proposed Code of Ethics. However, the page is not blank. The conflict of interest laws are on the Maryland books, and, while we hope the statutes will be amended, unless and until they are, we feel bound to make the proposed Code conform to the existing law.

Article 19A of the Code is the most important State enactment dealing with this subject. We have previously referred to the provisions of that statute. It prohibits State officials and employees from having a direct financial interest in any transaction in which such agency is or in any way may be concerned, in which he knows or may reasonably be ex-

pected to know that he has such a direct interest, and makes violation of the prohibition a misdemeanor.

We are advised that, while this Article became effective in 1961, there have been no criminal prosecutions under it. In a criminal action the State must prove a violation beyond a reasonable doubt. Even if it is believed there may have been a prohibited conflict of interest, it is difficult to meet the heavy burden of proof which the State faces in a criminal prosecution, particularly in as complicated an area of the law as that here under discussion.

By the terms of the Article, its criminal provisions do not apply to certain situations in which the official or employee has a direct financial interest, as defined, in a transaction with the State, but promptly discloses his interest to the agency of which he is a member and to the Board of Public Works. Under another provision, disclosure of any kind of financial interest is required and the official or employee is disqualified from taking part in the governmental transaction involved, but there is a further provision that his disqualification may be waived by the Board of Public Works when his participation is "required in the public interest because of his special knowledge or experience in the subject matter of the transaction."

Article 19A therefore embodies both the sanction of criminal prosecution, and, as to some situations, disclosure-disqualification as an alternative. By amendment, the disclosure-disqualification procedure could be made applicable to all cases where the official or employee has a defined financial interest in conflict with the performance of his duties in a transaction for the State. Failure to disclose his personal interest or to disqualify himself from participating in the transaction (unless the disqualification is waived) would subject the employee to criminal prosecution.

Failure of an employee to disclose his personal interest or disqualify himself would also subject him to the administrative sanctions of suspension or dismissal. These sanctions would be available under the general powers which the ex-

ecutive agencies possess, apart from Article 19A. Charges of failure to disclose or disqualify would be heard under existing procedures, with the modification which we recommend as to fact-finding by the Board of Ethics, upon request.

Most violations of the disclosure-disqualification requirements would be dealt with under the administrative procedure. However, we believe the criminal penalty should be retained in the statute. It could be a more effective deterrent to temporary or part-time officials and employees than punitive administrative action. In any case, if the failure to disclose or disqualify is deliberate and important, the malfeasance may well be treated as a criminal offense.

We respectfully urge the passage of such an amendment of Article 19A. We believe it would achieve the legislative purposes more effectively than does the act in its present form. The evils of conflicting interests, in our opinion, would be more likely to be prevented by disqualification of the person involved from acting for the State in a matter in which he is personally interested than by attempting to force him to dispose of his interest. The present prohibition of the retention of the personal interest, which we believe to be a major deterrent to recruitment and, in some cases, essentially unfair, would no longer be necessary. Bills to effectuate these changes have been introduced in the current session of the General Assembly.

However, unless and until the existing law is amended, we feel constrained to make the proposed Code of Ethics conform to the State policy therein set forth. Accordingly, the Code, in Section 6 of Article III, contains absolute prohibitions of direct financial interests of the employee in transactions in which his agency is or may be concerned. In an alternative provision we have set forth the enforcement procedure of disclosure and disqualification which we deem greatly preferable to absolute prohibition. If and when Article 19A is amended to make the alternative provision consistent with State policy, the Code can be quickly amended accordingly.

We have deemed it consistent with existing State policy, insofar as the proposed Code of Ethics is concerned, to broaden certain of the concepts set forth in Article 19A. Since that Article was adopted, the Legislative Council of the General Assembly has proposed a new definition of direct financial interest broader than that set forth in Article 19A. While the statute in which the recommendation of the Council was contained was not enacted, we think it consonant with Article 19A to embody in the proposed Code the more detailed definition of direct financial interest recommended by the Legislative Council.

We also believe it is consistent with Article 19A to provide that there shall be no violation of the Code of Ethics if within thirty days after the employee, in good faith, learns of his possession of the interest as defined, he makes full disclosure to the head of the agency involved in the transaction and promptly terminates or disposes of such interest. In addition to the exemptions now provided for by Article 19A, we have set forth several others, not now contained in the existing conflict of interest statute, which we believe to be fair and reasonable and not inconsistent with the policy of that statute.

In a separate Section 7 of the Code we provide a requirement of disclosure and disqualification from participation in certain transactions, which, although not prohibited by Article 19A, are ones in which the impartial exercise of judgment by a State officer or employee, in the Committee's view, would be seriously impaired. Only two narrow exceptions are made to the rule of non-participation under the circumstances defined. One would allow the making of public utility contracts in an amount less than \$1,000 and would, for example, permit a commission member, who was a railroad official, to order train tickets for himself for a State trip without disclosure and disqualification. The other would allow participation in the purely ministerial function of allocating State monies to bank depositaries so long as the official did not decide how much was to go to any bank.

As we have stated, the Committee favors the disclosure and disqualification approach for all situations where a State official may become involved in possible self-dealing. Alternate Section 6 therefore, would replace both Section 6 and Section 7 of the proposed Code if the General Assembly were to amend Article 19A to remove the absolute prohibition against possession of financial interests now contained therein.

Section 42, Article 27, of the Code makes it a misdemeanor for any person having any official connection as a member of a board of trustees of a public institution, or otherwise, to become directly or indirectly interested or concerned for profit in any transaction on account of such institution. Under this statute an unpaid member of the board of directors of a hospital may be committing a misdemeanor if he votes for a contract by the hospital with a large company in which he happens to own a relatively few shares of stock. We suggest that real conflicts of interest in this area could be taken care of more fairly and more effectively under the general disclosure and disqualification provisions which we hope to see enacted.

Other statutes deal with conflicts of interest of executive employees in particular State agencies. While these acts are not of general application, they are inconsistent with the disclosure-disqualification procedure which we advocate. If Article 19A is amended as we suggest, the General Assembly may well deem it advisable also to review these acts.

The Board of Ethics

The procedure by which the Code of Ethics can be interpreted and possible violations investigated, in our opinion, is as important as the Code itself. The Board of Ethics, whose creation we recommend, will have four important functions.

Experience with the Code, if it is promulgated, may well reveal the need for amendments. The Board, in its own operations, will be in a position to realize any shortcomings of the Code's provisions and to recommend changes to the Governor. If, as we hope, the General Assembly modifies Article

19A in accordance with our suggestion, the Board can adapt the alternate provision as to enforcement which we have proposed to whatever action the Legislature may take and submit it for gubernatorial action.

We have discussed above the useful function the Board can perform in the giving of advisory opinions. By requests for such rulings, employees and agency heads can have doubtful questions resolved before a situation has arisen. Moreover, by the publication of its opinions (from which names can be omitted) the Board can gradually prick out lines of permissible or impermissible conduct which are apt to be more helpful than general definitions.

The authority of the Board to make factual determinations upon request of an employee and the agency head, while important, is not likely to be often used. Our investigations indicate only a few instances in which charges of improper conduct in the area of conflict of interest have been heard in recent years in the various State agencies. The facts involved in such cases are generally not disputed; the question is whether the conduct has been improper. For that reason, we have not considered it necessary to ask that the General Assembly give the Board power to subpoena witnesses and documents. If and when future experience indicates the advisability of such powers, the matter can then be taken up with the Legislature.

In order to avoid possible legal questions as to delegation of power, we have suggested that requests for findings of fact by the Board be made only upon the joint request of the employee and the agency head. In practice, we believe that this provision will mean that the Board will make findings whenever an employee so desires. The agency head would generally be glad to be relieved of the responsibility. In any case, a gubernatorial suggestion that, as a matter of State policy, the agency head should join in the employee's request would undoubtedly be followed.

The proposed Code also authorizes the Board to make factual investigations at the request of either the Governor

or Attorney General. There may be situations in which there are reasonable suspicions that a course of conduct by a State official or employee is or may be a violation of the Code and no action is taken in the agency involved. The Governor and Attorney General represent the public at large. If either is convinced a situation requires investigation by an independent agency, he can channel the matter to the Board of Ethics. The Board's report would be made public.

There is considerable variance in the codes in other jurisdictions as to how the Board should be constituted. It is sometimes provided that certain officials, such as the Attorney General, be members of the Board by virtue of their office. We deem it preferable that the Board be constituted entirely of responsible and experienced members of the public at large. Possible conflicts of interests would thereby be avoided. The Attorney General, for example, by virtue of his office, might be called upon to represent an agency in proceedings before the Board. The Board should not represent either the State agencies or the State employees, but the public as a whole. The membership of the Board should be representative of the entire Maryland community.

Respectfully submitted,

HENRY G. BOSZ

BLAIR LEE, III

FRANCIS B. BURCH

EDMUND C. MESTER

RUSSELL L. DAVIS

WALTER B. WAETJEN

LOUIS L. GOLDSTEIN

JEROME B. WOLFF

HERBERT H. HUBBARD

REUBEN OPPENHEIMER,

JOHN R. JEWELL

Chairman.

ANTHONY M. CAREY,
Reporter.

March 7, 1969.

CODE OF ETHICS FOR EXECUTIVE BRANCH OFFICERS AND EMPLOYEES

By virtue of the authority vested in me by Section 14A of Article 41 of the Annotated Code of Maryland (1957 Edition, 1968 Supplement) and as Governor of the State of Maryland, I hereby promulgate the following Code of Ethics applicable to all officers and employees of the executive branch of the State.

Article I.

Declaration of Policy

State officers and employees are responsible to all of the people of the State and not to any favored segment or group. The business and affairs of the State must be conducted in such an impartial manner that all persons understand that no State officer or employee can be improperly influenced. State officers and employees must avoid all situations where prejudice, bias, or opportunity for personal gain could influence their decisions. They must equally avoid circumstances suggesting that favoritism or personal gain is a motivating force in the conduct of State government.

It is the intent of this Code to set forth the minimum ethical standards to be followed by all officers and employees of the executive branch of the government. These standards are intended not only to require officers and employees to avoid activities that might result in using a public office or employment for private gain or the giving of favored treatment to any organization or person but also to maintain public confidence in the executive branch by prohibiting activities that might permit opportunity for personal gain or personal preference to influence decisions. The objectives are to maintain an impartial administration of the State government and to maintain public confidence in government.

Article II.

Definitions

1. "Agency" means any department, agency, commission, bureau, authority, or other instrumentality of the executive branch of the State of Maryland whose officers or employees are covered by the provisions of this Code of Ethics pursuant to Article VI hereof.

2. "Agency head" means the chairman or the chief executive officer or administrative officer of each of the State agencies.

3. "Assist" means to act, or offer or agree to act, in such a way as to help, aid, advise, furnish information to, or otherwise provide assistance to another person believing that such action is of help, aid, advice, or assistance to such person and with intent so to assist such person.

4. "Confidential information" means material or significant information received by an officer or employee by reason of or in the course of his relationship with an agency which is not intended at the time received to be made public and as to which the officer or employee is bound to act for the benefit of the agency and not for his own benefit.

5. "Entity" means any individual, partnership, association, corporation, firm, institute, trust, foundation, or other organization (other than the State or an agency thereof) whether or not operated for profit.

6. "Financial interest" means (a) ownership of more than three per cent (3%) of the invested capital or capital stock of any entity, (b) ownership of securities or obligations of any type which are or may become equivalent to or convertible into ownership of more than three per cent (3%) of the invested capital or capital stock of any entity, or (c) ownership of any interest or involvement in any relationship from or as a result of which the owner has, within the past

three years, received, or is presently or in the future entitled to receive more than one thousand dollars (\$1,000) per year.

7. "Direct financial interest" means a financial interest owned or possessed by an officer or employee, his spouse, child, parent, brother, or sister.

8. "Participate", in connection with a transaction involving the State or a transaction involving an agency, means to participate in any proceeding, decision, determination, finding, ruling, order, grant, payment, award, license, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect thereto, personally and substantially through approval, disapproval, decision, recommendation, the rendering of advice, investigation, or otherwise.

9. "Transaction involving the State" or "transaction involving the agency" means any proceeding, application, submission, request for ruling or other determination, contract, claim, case, or other such particular matter which the State officer or employee in question believes or has reason to believe (a) is one to which the State or an agency thereof is or will be a party, or (b) is one in which the State or an agency thereof has a direct and substantial proprietary interest.

Article III.

Standards of Ethical Conduct for State Officers and Employees

It shall be considered unethical for any State officer or employee:

1. To receive, accept, seek, solicit, or take, directly or indirectly, any gift or benefit, including money, any service, gratuity, fee, entertainment, hospitality, loan, promise, or anything of economic value from or on behalf of any individual or entity who is doing or is seeking to do business of any kind with the State or whose activities are regulated or controlled in any way by the State, under circumstances

from which the officer or employee could reasonably have inferred that the gift or benefit was intended to influence such officer or employee in the performance of his official duties or was intended as a reward for any official action on his part.

2. To disclose to any individual or entity for the officer's or employee's private gain or advantage, or for the private gain or advantage of another individual or entity, confidential information concerning the property, government, or affairs of the State.

3. To engage in outside employment which results in a conflict between the private interests of the officer or employee and his official State duties and responsibilities or which impairs or could reasonably be expected to impair his independence of judgment in the exercise of his official duties.

4. To use the prestige of a State office or employment for the officer's or employee's private gain or for the private gain of another.

5. To assist another individual or entity for compensation or to represent another individual or entity as agent or attorney, whether or not for compensation, in any transaction involving the agency of which he is an officer or employee or in any transaction involving the State which results in a conflict or could reasonably be expected to result in a conflict between the private interests of the officer or employee and his official State duties and responsibilities, or to share in any compensation received by another individual or entity for assistance which such officer or employee would be prohibited from rendering by this section.

Nothing in this section shall prevent an officer or employee from assisting (a) his parent, spouse, or child or (b) any individual or entity for whom he is serving as guardian, executor, administrator, trustee, or other personal fiduciary in a transaction involving the State except in transactions in which he has participated or over which he has official re-

sponsibility and provided that the circumstances of such assistance shall have been disclosed to the officer's or employee's agency head and approved by him in advance of such assistance or (c) any member of the public when it is part of his official duties to do so.

6. To own or possess a direct financial interest in (a) a transaction involving the agency of which he is an officer or employee or (b) an entity engaged in a transaction involving the agency of which he is an officer or employee or (c) an entity which has a direct financial interest in an entity engaged in a transaction involving the agency of which he is an officer or employee or which is subject to regulation by the agency of which he is an officer or employee.

Nothing herein shall preclude a State officer or employee from owning a direct financial interest in the following provided that written disclosure of the possession of such interest, if known to the officer or employee, be made to his agency head and to the Board of Ethics established by Article IV hereof:

(i) a contract or subcontract with the State or an agency thereof provided the contract or subcontract is the result of such person having made the lowest sealed competitive bid and having had said bid accepted by the State or the general contractor, and provided the officer or employee took no part directly or indirectly in the preparation of the plans or specifications for such contract or subcontract and did not assist in the procurement of the State's or the general contractor's acceptance of such low bid;

(ii) a contract with the State or an agency thereof for the rendering or furnishing of public utility services or other services where the services are rendered at a published rate which is established or authorized by any federal, state, county, or city regulatory agency;

(iii) transactions involving the State for the acquisition of real estate by the State or a political subdivision thereof

which is needed or required for public purposes when the compensation to be paid by the State or political subdivision for the property involved (a) does not exceed the value of such property as established by the Board of Property Review created pursuant to Section 17 of Article 89B of the Annotated Code of Maryland (1964 Replacement Volume), as amended from time to time, provided that all records of the State or political subdivision or any agency thereof pertaining to any such transaction shall be open to public inspection at all times during regular business hours, (b) or does not exceed the value established by a condemnation jury in a condemnation proceeding with respect to the property involved, (c) or in the case of property acquired in Baltimore City does not exceed the highest value established by the appraisers appointed by the Department of Real Estate of Baltimore City, (d) provided that, in all events, if such real estate has been acquired as the consequence of any action on the part of the State officer or employee involved which constitutes a violation of this Code of Ethics, such officer or employee shall not be relieved of any sanction or penalty for such violation;

(iv) deposits made by the State or any agency thereof in any banking institution;

(v) agreements with the State or any agency thereof for the purpose of composing threatened or actual litigation;

(vi) any transaction involving the agency that the Board of Ethics shall have determined in a written opinion is not in conflict with the public interest or is within the scope of a general or special exception provided for by said Board;

(vii) any transaction involving the agency where the officer or employee has no actual or constructive knowledge of his ownership of a direct financial interest;

(viii) any transaction involving the agency with respect to which an officer or employee who in good faith and within 30 days after he learns of his possession of such direct financial interest makes full disclosure to the agency head involved

in the transaction and promptly terminates or disposes of such interest.

Nothing in this section shall require the disclosure of the possession of an interest in (a) a contract with his agency for the rendering or furnishing of public utility services or any other service at a published rate established or authorized by any federal, state, county, or city regulatory agency where payments under the contract do not exceed \$1,000 and where the services supplied are usual and necessary for the performance of the official duties of the State officer or employee, or (b) transactions involving the State with respect to the deposit of State monies in bank depositaries where a fixed formula is used to determine the percentage ratio of State monies to be deposited in any given bank and where the officer or employee has not participated or does not participate in the fixing or amending of the formula.

7. To participate as a State officer or employee in a transaction involving the State to which any of the following is a party: (a) any entity of which he is an officer, director, trustee, partner, or employee; or (b) any entity with which he is negotiating or has any arrangement concerning prospective employment; or (c) any entity which is a party to an existing contract with such State officer or employee if such contract when viewed in light of his participation in the transaction results in a conflict or could reasonably be expected to result in a conflict between the private interests of the officer or employee and his official State duties; or (d) any entity which is a creditor or obligee of such State officer or employee with respect to a thing of economic value and which, by reason therefor, is in a position to affect directly and substantially such officer's or employee's economic interest.

In any case where a State officer or employee must disqualify himself under the provisions of this section, he shall promptly notify his agency head, or, if he is an agency head, then his appointing authority and make a full written disclosure of his financial interest to such agency head or ap-

pointing authority. A copy of such written disclosure shall be sent to the Board of Ethics. The agency head will thereupon relieve him of his duty and responsibility in the matter, unless the Board of Ethics makes a written determination that under the circumstances the public welfare and interest in the officer's or employee's participation exceeds the public interest in his disqualification. A full statement of the pertinent facts and of the Board's determination of public welfare and interest shall be kept on file by the Board and shall be a public record.

Nothing in this section shall preclude a State officer or employee from participating in (a) a contract with his agency for the rendering or furnishing of public utility services or any other service at a published rate established or authorized by any federal, state, county, or city regulatory agency where payments under the contract do not exceed \$1,000 and where the services supplied are usual and necessary for the performance of the official duties of the State officer or employee, or (b) transactions involving the State with respect to the deposit of State monies in bank depositories where a fixed formula is used to determine the percentage ratio of State monies to be deposited in any given bank and where the officer or employee has not participated or does not participate in the fixing or amending of the formula.

Article IV.

Board of Ethics

A Board of Ethics is hereby established within the executive branch of the State government. It shall consist of seven members selected from the general public who are not subject to this Code of Ethics. The term of each member shall be four years or until a successor is appointed and takes office. Any member of the Board shall be eligible for reappointment. Of the members first appointed, one member shall be appointed for one year, two members for two years, two members for three years, and two members for four years. One member shall be designated as chairman by

the Governor and shall serve as such during his full term of office as a member. Five members of the Board shall constitute a quorum, regardless of vacancies, and the affirmative vote of at least five members shall be necessary for any action. Members of the Board shall serve without compensation but shall be reimbursed for their actual expenses incurred in the performance of their duties.

The powers and duties of the Board shall be as follows:

1. To recommend from time to time such orders, rules, regulations and changes, as it deems necessary and proper to supplement, administer, and implement or amend the provisions of this Code of Ethics, which recommendations, when approved by the Governor, shall become part of this Code of Ethics. A copy of any such orders, rules, and regulations, when adopted by the Governor, shall be filed with the Secretary of State as an amendment to this executive order.

2. To render advisory opinions to officers and employees of the State, or any agency thereof, with respect to any matter or transaction in which such officer or employee is involved concerning the applicability of this Code of Ethics. The Board shall publish such advisory opinions with such deletions as may be necessary to prevent disclosure of the officer or employee who may request such an opinion.

3. To investigate any alleged violation of said Code by an officer or employee where both the appointing authority for said officer or employee and the officer or employee involved in the alleged violation shall request the Board to make such investigation. A written report of the results of the Board's investigation shall be submitted to both the appointing authority and the employee involved and may be utilized as the basis for any administrative action appropriate under the circumstances in accordance with administrative procedures provided for by law.

4. To investigate alleged violations of the Code of Ethics upon the written request of either the Attorney General or the Governor, and to submit a written report to the requesting official.

5. Under no circumstance shall the Board of Ethics be empowered to take direct administrative action itself but rather its function shall be solely advisory and investigatory as provided for herein.

Article V.

Application

The standards of ethical conduct set forth in this Code of Ethics shall be applicable without exception to all part-time and full-time officers and employees in the executive branch of the State of Maryland whether or not they are members of the Merit System or exempt from the provisions of the Merit System.

All officers and employees who have been appointed by the Governor shall conform to these standards without further directive. All other officers and employees who serve under a State appointing authority which is appointed by the Governor shall comply with the agency code of ethics to be issued by such respective authorities as provided for in Article VI hereof. Failure to conform to the standards of ethical conduct so prescribed may lead to removal from office, termination of employment, or other action as the particular case may require.

Article VI.

Agency Codes of Ethics

Each appointing authority in the executive branch of the State government, which shall include all departments, commissions, boards, and authorities whose agency head or members are appointed by the Governor, is directed to adopt this Code of Ethics and to require all of its officers and employees to comply with the standards of ethical conduct prescribed herein. Each appointing authority shall submit a written report to the Governor describing the action that has been taken in promulgating the standards of ethical conduct set forth in this Code.

(Alternate Section 6 in lieu of Sections
6 and 7 of Article III)

6. To participate in a transaction involving the State in which an officer or employee has a direct financial interest or to participate in a transaction involving the State to which, to his knowledge, any of the following is a party:

(a) any entity in which he has a direct financial interest of which he may reasonably be expected to know;

(b) any entity of which he is an officer, director, trustee, partner, or employee;

(c) any entity with which he is negotiating or has any arrangement concerning prospective employment;

(d) any entity which is a party to an existing contract with such officer or employee where such contract when viewed in light of his participation in the transaction results in a conflict or could reasonably be expected to result in a conflict between the private interests of the officer or employee and his official State duties;

(e) any entity, either engaged in a transaction involving the State or subject to regulation by the agency of which he is an officer or employee, in which a direct financial interest is owned by another entity in which the officer or employee has a direct financial interest;

(f) any entity which is a creditor or obligee of such State officer or employee with respect to a thing of economic value and which, by reason thereof, is in a position to affect directly and substantially such officer's or employee's economic interest.

The Board of Ethics may by written order suspend the operation of this section, however, in whole or in part, as to any particular State officer or employee or class thereof with respect to any particular or class of transactions involving the State, provided that said Board shall make a finding in writing that, under all the circumstances, the public welfare and

interest in an officer's or employee's participation exceeds the public interest in his disqualification.

In any case where a State officer or employee must disqualify himself under the provisions of this section, he shall promptly notify his agency head, or, if he is an agency head, then his appointing authority and make a full written disclosure of his financial interest to such agency head or appointing authority. A copy of such written disclosure shall be sent to the Board of Ethics. The agency head will thereupon relieve him of his duty and responsibility in the matter, unless the Board of Ethics makes a written determination that under the circumstances the public welfare and interest in the officer's or employee's participation exceeds the public interest in his disqualification. A full statement of the pertinent facts and of the Board's determination of public welfare and interest under any provision of this section shall be kept on file by the Board and shall be a public record.

Nothing in this section shall preclude a State officer or employee from participating in (a) a contract with his agency for the rendering or furnishing of public utility services or any other service at a published rate established or authorized by any federal, state, county, or city regulatory agency where payments under the contract do not exceed \$1,000 and where the services supplied are usual and necessary for the performance of the official duties of the State officer or employee, or (b) transactions involving the State with respect to the deposit of State monies in bank depositaries where a fixed formula is utilized to determine the percentage ratio of State monies to be deposited in any given bank and where the officer or employee does not participate in the fixing or amending of the formula.

the 1990s, the number of people with a mental health problem has increased by 50% (Mental Health Foundation 1999). The prevalence of mental health problems has increased in the general population, and the incidence of mental health problems has increased in the prison population (Mental Health Foundation 1999).

There is a growing awareness of the need to address the mental health needs of prisoners. The Department of Health (1999) has published a strategy for mental health services, which includes a commitment to improve the mental health of prisoners. The Department of Health (1999) has also published a strategy for mental health services, which includes a commitment to improve the mental health of prisoners.

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the 1990s, the number of people in the UK who are aged 65 and over has increased by 1.5 million, and the number of people aged 75 and over has increased by 1.2 million (Office for National Statistics 1999).

There is a growing awareness of the need to address the needs of older people in the community. The Department of Health (1999) has published a strategy for older people, which sets out the government's commitment to improve the health and quality of life of older people. The strategy is based on the following principles:

- Older people should be able to live independently and actively in the community.
- Older people should be able to access the services and support they need.
- Older people should be able to participate in decisions about their care and support.
- Older people should be able to live in a safe and secure environment.

The strategy also sets out a number of key objectives, including:

- To reduce the number of older people who are in long-term care.
- To improve the health and quality of life of older people.
- To ensure that older people have access to the services and support they need.
- To ensure that older people are able to participate in decisions about their care and support.

The strategy is a key document in the development of policy for older people in the UK. It provides a framework for the development of services and support for older people, and sets out the government's commitment to improve the health and quality of life of older people.

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